DARUS v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Sim J.) March 14, 1969]

[Penang — Criminal Appeal No. 8 of 1969]

Road Traffic — Evidence of chemist on damage to vehicles involved in road accident — No eye-witnesses to accident — Criminal Procedure Code (S.S. Cap. 21), s. 427.

In this case the magistrate convicted the appellant on the basis of a chemist's report on the damage to the vehicles involved in the accident. There were no eye-witnesses to the accident. In his report the chemist stated his opinion "that the front of the car collided with the rear-wheel of the bicycle".

Held: the chemist in this case went beyond his function under section 427 of the Criminal Procedure Code to express an opinion as to how the accident occurred and as there was no other evidence in support of the charge against the appellant other than the fact that he was the driver of the car and had knocked down the cyclist, there was no evidence to support the conviction and the conviction must be quashed.

MAGISTRATE'S CRIMINAL APPEAL.

Lim Kean Siew for the appellant.

K.C. Vohrah (Deputy Public Prosecutor) for the respondent.

Ong Hock Sim J.: After the incident (there being no eye-witnesses), the bicycle and the motor car were sent to the chemist by P.W.2, Inspector Gobinathan, the investigation officer, for examination. The chemist duly made a report which was served on the accused. The chemist then reported "These two vehicles were said to have been involved in a fatal accident. I examined the above vehicles and found the damage on them to be as follows:" setting out the damage firstly to the Mercedes Benz AE 4838 and secondly to a Lady's Bicycle 'King Edward' brand. He went further to say that:—

> "From my above examination and observation, I am of the opinion that the front of the car collided with the rear-wheel of the bicycle probably at a slight angle causing the bicycle to deflect bringing its near-side into subsequent collision with the near-side front of the car."

It was hardly necessary to send the motor car and cycle to the chemist for examination as the motor car was examined by the vehicle examiner of the Road Transport Department and the cycle was an exhibit. The only witnesses called were the sister-in-law of the deceased to identify the cycle and the deceased, the investigation officer who made a sketch of the scene, the police photographer who took some photos, the vehicle examiner who examined the car and a policeman who arrested the appellant. As I have said there were no eye-witnesses to depose to the accident. In the circumstances there would appear to be no evidence whatever to justify the magistrate calling upon the appellant for his defence to the charge. It is made clear in his grounds of judgment that he accepted the chemist report as his basis for doing so when he said:—

> "Damages to the deceased's bicycle Ex. P.1. and the car, corroborated by the chemist's report Ex. P.6 leave no doubt whatsoever that the rear of the cycle was hit by the front of the car driven by the accused driving a car AE 4838 when deceased was cycling on his correct side of the road."

Section 427 of the Criminal Procedure Code (S.S.) reads:—

> "Any document purporting to be a report under the hand of any of the persons mentioned in subsection (2) of this section upon any person matter or thing examined by him . . . . may be given in evidence in any inquiry, trial or other proceedings."

Now the car and cycle were sent for examination and the chemist reported on the damage to them. I am of the view that he went beyond his function under section 427 to express an opinion as to how the accident could probably have occurred. But for the opinion expressed by him, there was no evidence in support of the charge against the appellant other than the fact he was the driver of the car and had knocked down the cyclist. This reliance on the opinion of the chemist as to the manner in which a traffic accident occurred where no eye-witnesses are available as a basis to found a charge seemed to have stemmed from an article written by Miss S.J. Wilson, senior chemist, Department of Chemistry, Federation of Malaya in Vol. 28 of the *Malayan Police Magazine*, 1962 entitled "Investigation of Traffic Accidents." I will quote a part of that article which reads:—

> "It is important for traffic investigators to realise that the full story of a traffic accident can be read' from the physical evidence which is left on the vehicles and people involved — though it may be necessary to use a microscope to do the 'reading.' However, for the scientist to be able to read the story accurately and prove that his reading is correct it is essential that *all* of the evidence be made available to him."

In this case, the sketch plan of the scene and the photographs were not sent to the chemist nor was he told the appellant's version of how the accident had happened. (The first information report made by the appellant of the accident was not produced).

In the circumstances I hold there was no evidence to support the conviction and I set aside the conviction and sentence. The endorsement of the driving licence of the appellant is ordered to be cancelled and the fine of $200 refunded to him.

Conviction and sentence set aside.

Solicitors: *Lim Kean Siew & Co.*